

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

EDWARD BOX,)	
)	
Plaintiff,)	
)	
v.)	No. 4:07CV02063 ERW
)	
LARRY CRAWFORD, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on plaintiff's "motion to voluntarily withdraw motion for hearing." The motion is frivolous and will be denied.

The Court dismissed plaintiff's complaint on January 8, 2008. Plaintiff appealed, and the United States Court of Appeals for the Eighth Circuit affirmed the dismissal on December 3, 2008. In its judgment affirming this Court, the Eighth Circuit remanded the case to this Court to assess the full \$455 filing fee in installments. On December 4, 2008, this Court ordered plaintiff to either pay the full filing fee or to submit a certified copy of his prison account statement. When plaintiff failed to timely file a copy of his account statement, the Court ordered plaintiff to pay the full amount of the appellate filing fee.

Plaintiff now seeks to avoid paying the appellate filing fee by withdrawing his motion for rehearing in the appellate court. First, this Court does not have jurisdiction

to withdraw any motion pending before the United States Court of Appeals for the Eighth Circuit. Second, plaintiff may not avoid paying the \$455 appellate filing fee by withdrawing his motion for rehearing. Third, this Court has been ordered by the United States Court of Appeals for the Eighth Circuit to collect the appellate filing fee, and this Court does not have jurisdiction to vacate the appellate court's orders.

Plaintiff also states that he attempted to timely send this Court a copy of his prison account statement. Included with the instant motion is a copy of his prison account statement. To facilitate plaintiff's payment of the appellate filing fee, the Court will vacate its Order dated January 20, 2009. And the Court will permit plaintiff to pay the fee in installments. A review of plaintiff's account indicates an average monthly deposit of \$47.92, and an average monthly balance of \$11.19. Accordingly, the Court will assess an initial partial filing fee of \$9.58, which is 20 percent of plaintiff's average monthly deposit. 28 U.S.C. § 1915(b).

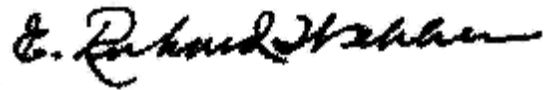
Accordingly,

IT IS HEREBY ORDERED that plaintiff's "motion to voluntarily withdraw motion for hearing" [#17] is **DENIED**.

IT IS FURTHER ORDERED that the Court's Order dated January 20, 2009, is **VACATED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$9.58 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for his appellate proceeding.

Dated this 6th Day of February, 2009.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE